

Exhibit D

**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

ZEBEDIAH GEORGE DALTON;
BLUERIBBON COALITION; KYLE
KIMMERLE; and SUZETTE RANEA
MORRIS;

Plaintiffs,
v.

JOSEPH R. BIDEN, JR., in his official capacity as President of the United States; DEBRA A. HAALAND, in her official capacity as Secretary of Interior; DEPARTMENT OF THE INTERIOR; TRACY STONE-MANNING, in her official capacity as Director of the Bureau of Land Management; BUREAU OF LAND MANAGEMENT; THOMAS J. VILSACK, in his official capacity as Secretary of Agriculture; DEPARTMENT OF AGRICULTURE; RANDY MOORE, in his official capacity as Chief of the United States Forest Service; and UNITED STATES FOREST SERVICE,

Defendants.

Civil Action No. 4:22-cv-0060-DN

Hon. David Nuffer

**DECLARATION OF ELIZABETH S. MERRITT IN SUPPORT OF INTERVENTION
BY NATIONAL TRUST FOR HISTORIC PRESERVATION**

1. My name is Elizabeth S. Merritt. I submit this declaration on behalf of the National Trust for Historic Preservation in the United States (the “National Trust”) in support of intervention by the Proposed UDB Intervenors (Utah Diné Bikéyah), Friends of Cedar Mesa, Archaeology Southwest, Conservation Lands Foundation, Inc., Patagonia Works, The Access Fund, National Trust for Historic Preservation, and the Society of Vertebrate Paleontology in the above-captioned matter.

2. I am a citizen of the United States and a resident of Oakton, Virginia.

3. I am Deputy General Counsel at the National Trust working out of our headquarters in Washington, D.C. I have worked in the General Counsel's office at the National Trust since 1984, and have served as Deputy General Counsel since 2001. I have dedicated my professional career to the preservation of historic places on public lands and I am also a member of the National Trust. I submit this declaration on behalf of the National Trust in both my official capacity and as an individual member who enjoys and appreciates the historic and cultural resources included in the Bears Ears National Monument as designated by President Obama on December 28, 2016 (the "Obama Proclamation") and designated by President Biden on October 8, 2021 (the "Biden Proclamation").

4. The National Trust is a private, charitable, and educational non-profit corporation chartered by the United States Congress in 1949 to (i) protect and defend America's historic resources, (ii) further the historic preservation policy of the United States, and (iii) facilitate public participation in the preservation of our nation's heritage. *See* 54 U.S.C. § 312102.

5. The National Trust is headquartered in Washington, D.C., and has field offices around the country. It also has a network of 27 historic sites that are open to the public. The National Trust has more than one million members and supporters across the country. With their strong support, the National Trust works to protect significant historic sites and to advocate for historic preservation as a fundamental value in programs and policies at all levels of government. The National Trust thus brings this action on behalf of itself and its adversely affected members.

6. The National Trust has been intensively involved in efforts to preserve the cultural resources contained in the Bears Ears region since 2007. These efforts have included, among other things, advocating for the "national monument" designation under President Obama, opposing President Trump's revocation of the national monument, including participation as a co-plaintiff

in a lawsuit challenging President Trump's action, advocating for restoring the national monument designation again under President Biden and engaging the public at each of these stages. The national monument designation is critical to protecting cultural and natural resources because it changes the BLM's management approach from balancing multiple-uses, (which includes extractive uses and recreational uses that are potentially harmful to cultural resources, such as target shooting), to requiring the agency to manage the area to ensure the preservation of cultural and historic resources.

7. I have been a member of the National Trust's internal team that focuses on advocacy to protect Bears Ears since 2016.

8. The cultural resources in the Bears Ears National Monument are of personal and professional significance to me. In my professional experience based on more than 38 years advocating for the protection of places of historic and cultural value, the resources in the Bears Ears area can only be adequately protected by a national monument designation. Moreover, the resources within Bears Ears are exactly the type of historic sites and objects that the Antiquities Act was intended to protect. Because of my personal and professional commitment to protecting the resources within the Bears Ears, I personally represented the National Trust at the White House signing ceremony on October 8, 2021, where President Biden signed the Proclamation redesignating the Bears Ears National Monument.

9. If the Biden Proclamation were deemed unlawful, and fewer federal resources were available to support protection, visitor education, and outreach, the National Trust would once again be required to divert financial and staff resources away from other projects to advocate for protection as a national monument and engage with the public regarding related education efforts.

10. If Plaintiffs in this case prevail, significant portions—or even all—of the land protected by the Biden Proclamation will once again lose protection from oil and gas development. The Biden Proclamation is explicit that the lands included within the Bears Ears National Monument is not subject to oil or gas development. *See* Proc. 10285, 86 Fed. Reg. 57,321, 57,331 (Oct. 15, 2021) (“All Federal lands and interests in lands within the boundaries of the monument are hereby appropriated and withdrawn from all forms of entry, location, selection, sale or other disposition under the public land laws . . . [and] from location, entry, and patent under the mining laws.”). If Plaintiffs’ lawsuit is successful, however, this protection will no longer apply and areas covered under the Biden Proclamation will be vulnerable to exploitation. As noted above, the national monument designation is paramount to ensuring protection of the Bears Ears area and, without the area being protected as such, it’s susceptible to harmful extractive and recreational uses. As a result of this lawsuit, and if Plaintiffs prevail, the National Trust has and will need to divert funds and staff time away from other initiatives to defend against mineral extraction and other potentially destructive activities in areas that lose their monument protections.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 23, 2022.


Elizabeth S. Merritt